

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-99000-smb

4 Adversary No. 10-04891-smb

5 Adversary No. 10-05083-smb

6 Adversary No. 10-05091-smb

7 - - - - - x

8 In the Matter of:

9 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF B.,

10 Plaintiff

11 v.

12 THE ROBERT AUERBACH REVOC.,

13 Defendants

14 - - - - - x

15 In the Matter of:

16 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF B.,

17 Plaintiff

18 v.

19 THE S. JAMES COPPERSMITH.,

20 Defendants

21 - - - - - x

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1 In the Matter of:

2 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF B.,

3 Plaintiff

4 v.

5 GUTMACHER ENTERPRISES, LP.,

6 Defendants

7 - - - - - x

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10 U.S. Bankruptcy Court

11 One Bowling Green

12 New York, New York

13

14 May 14, 2014

15 10:07 AM

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18 B E F O R E :

19 HON STUART M. BERNSTEIN

20 U.S. BANKRUPTCY JUDGE

21

22 ECR OPERATOR: F. FERGUSON

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1 Hearing re: Administrative case no. 10-04981: Discovery
2 Conference.

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4 Hearing re: Administrative case no. 10-05083: Discovery
5 Conference.

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7 Hearing re: Administrative case no. 10-05091: Discovery
8 Conference.

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25 Transcribed by: Jamie Gallagher

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1 P R O C E E D I N G S

2 THE COURT: Okay, Madoff. Why don't you give me
3 an update of status of where you are in relation to your
4 dispute because I'm getting letters, and one side seems to
5 think that you're narrowing the differences, and I just
6 don't -- this is my first conference in this case which
7 seems to have a long history. So, just give me an idea of
8 where you are.

9 MS. TRUONG: Good morning, Your Honor. Sarah Jane
10 Truong on behalf of the trustee.

11 To give you some background on the case, we have,
12 as you've seen in the letters that have been submitted, we
13 have attempted to meet and confer in good faith and
14 negotiate with the defendants over various discovery
15 disputes in these three cases. For over a year we're --
16 we've extended the case management plans. We're now in
17 seventh amended case management plans for two of the cases.

18 At issue, we have tried to narrow the disputes.
19 During the course of the last year, the defendants have
20 again and again repeatedly represented to the trustee and to
21 the Court that they will provide us with discovery responses
22 and documents. We have continued to extend dates to allow
23 them to provide the discovery to us. We have followed up
24 with them diligently. They have failed to provide anything
25 but tricklings of documents and non-responsive discovery

1 responses to the responses that are in dispute.

2 Since last fall when we brought this issue before
3 the Court initially, we have continued to try to engage with
4 the defendants. One of the types of documents that was in
5 dispute are defendants' bank records. The trustee served --

6 THE COURT: What records?

7 MS. TRUONG: The defendant's bank records.

8 THE COURT: Bank records.

9 MS. TRUONG: Yes. And so the trustee endeavored
10 to serve Rule 45 subpoenas on financial institutions where
11 the defendants held accounts and we are continuing to obtain
12 documents from those subpoenas for the accounts that we have
13 identified to date, that are relevant where transfers were
14 received by defendants.

15 THE COURT: Are these subsequent transferees, the
16 defendants?

17 MS. TRUONG: Initial and subsequent transferees.
18 So, there are both initial and subsequent transfers at issue
19 in the cases.

20 THE COURT: Is there a dispute regarding the
21 initial transfers?

22 MS. TRUONG: The defendants have agreed to admit
23 to most of the initial transfers, and most of the disputes
24 rely with the subsequent transfers.

25 THE COURT: Okay.

1 MS. TRUONG: And so we are currently trying to
2 work through and we're willing to continue to negotiate with
3 the defendants on stipulations. Since we have obtained the
4 defendant's bank records and are continuing to obtain bank
5 records from the banks themselves, if we can get
6 stipulations from the defendants that confirm the relevant
7 account numbers where transfers were received, both initial
8 and subsequent transfers, if we can get stipulations as to
9 the admissibility of the records that the trustee has
10 obtained from the banks in response to the Rule 45
11 subpoenas, and we obtained stipulations of facts, that is
12 stipulations that -- as to each of the transfers, whether
13 initial or subsequent, that each of the defendants obtained,
14 than we do agree that all of this will obviate the need to
15 obtain the defendants' bank records directly from the
16 defendants.

17 However, going beyond that, still at issue and
18 still at dispute are documents that may potentially be
19 relevant to affirmative defenses that have been raised by
20 the defendants. For example, as to subsequent transfers, in
21 each of the cases the defendants have raised affirmative
22 defenses that subsequent transfers were received for value,
23 and I'm quoting from their affirmative defenses, "in
24 accordance with contractual agreements or other
25 obligations." In it --

1 THE COURT: Have they produced the contracts or
2 evidence of the obligations?

3 MS. TRUONG: I believe that they have provided one
4 trust agreement, a unitrust trust agreement in one of the
5 cases. There's also another affirmative defense that is
6 raised by defendants in Gutmacher as to the Nicole trust
7 regarding payment of insurance proceeds. In addition, some
8 of the defendants raised defenses that the initial transfers
9 that were received were used for living expenses and other
10 expenses.

11 So, we believe that any documents that would --
12 that underlie these affirmative defenses are relevant and
13 should be produced. There are also discovery responses --
14 discovery requests, like interrogatories and requests for
15 admission that are still outstanding that defendants have
16 not responded to, or if they have provided responses, those
17 responses have been non-responsive largely.

18 THE COURT: Well, requests for admissions, if they
19 haven't responded are self-executing, so that's not a
20 problem or shouldn't be a problem.

21 MS. TRUONG: In addition, I wanted to raise the
22 documents from the -- one of the third parties, FMC, that we
23 referred to in our letters. And currently, the state of
24 play is that the defendants identified 40 boxes that may
25 contain relevant documents. They offered to provide those

1 documents to us, and then they revoked that offer. And then
2 in the May 9th letter submitted to Your Honor, they did
3 raise that they would make these 40 boxes available for the
4 trustee to go look at, and inspect, and make copies of
5 potentially relevant documents.

6 THE COURT: Right.

7 MS. TRUONG: However, we --

8 THE COURT: That's not acceptable to you, because
9 that's what you were proposing yesterday.

10 MS. TRUONG: We would ask that we be able to, at
11 our -- while it's not our obligation, at our own cost, we
12 are willing to have a vendor go in and scan those 40 boxes
13 of documents so that we can load them into a database and
14 make them text searchable so that we can review them in an
15 efficient manner.

16 To the extent the defendants want to preserve any
17 privilege arguments, we would agree to work out an agreement
18 with the defendants to preserve any privilege arguments as
19 to the 40 boxes of documents with FMC.

20 THE COURT: All right.

21 MS. TRUONG: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 MR. FOLKENFLIK: Your Honor, I feel I know more
24 about what they think the deficiencies are today than I've
25 known at any time up until today.

1 THE COURT: I don't know, they wrote a pretty
2 detailed letter on January 28th.

3 MR. FOLKENFLIK: Well, but the detailed letter has
4 details that are not really going to the crux of the issue.
5 Your Honor might recall some years ago Alan King had a movie
6 called "Just Tell Me What You Want." Their arguments, their
7 detailed letters do not address the reality of the situation
8 or the reality of the claims. And let me just give Your
9 Honor a little background.

10 THE COURT: Okay.

11 MR. FOLKENFLIK: There are three groups of
12 defendants in three different cases that are slightly
13 different from each other. With respect to Coppersmith,
14 let's take that because that's the easiest. With respect to
15 Coppersmith, the -- James Coppersmith and his wife donated
16 assets to a charitable remainder unitrust and the unitrust
17 document provides by its terms that in each year of their
18 lives, and they were not young at the time they did this,
19 Mr. Coppersmith is now about 82 years old, in each year of
20 their lives, the unitrust pays them 12 and a half percent of
21 the value of the trust.

22 When I talk about the defense of antecedent debt,
23 there are two types of defenses. One's been ruled upon by
24 -- with respect to the initial transferee by Judge Rakoff,
25 although that ruling may or may not survive appeal. And the

1 other is with respect to the subsequent transferees.

2 THE COURT: Excuse me, is that issue on appeal?

3 MR. FOLKENFLIK: It is not currently on appeal,

4 Your Honor. I've understood --

5 MR. JACOBS: No, it --

6 MR. FOLKENFLIK: -- I understand that --

7 THE COURT: Which issue are you talking about?

8 MR. FOLKENFLIK: The issue of antecedent debt with
9 respect to whether or not the initial transferee, who takes
10 a transfer in good faith based on the statement values shown
11 in his account, can claim that the defense of a good faith
12 transfer for an antecedent and --

13 THE COURT: You're arguing that the fictitious
14 profits, or the obligation to restitution is the antecedent
15 debt that's being satisfied?

16 MR. FOLKENFLIK: I would argue that in a --

17 THE COURT: Okay.

18 MR. FOLKENFLIK: -- suit against Mr. Madoff
19 directly, and when I attended the In re: Bernard L. Madoff
20 hearing at the Second Circuit, Judge Jacobs and Judge Raggi
21 seemed to agree, and I believe Judge Cabranes agreed also,
22 that the claims against Madoff would be for the full amount
23 of the statement value because as Your Honor may --

24 THE COURT: Well, but that's a direct fraud claim,
25 this is a --

1 MR. FOLKENFLIK: That's --

2 THE COURT: -- SIPC --

3 MR. FOLKENFLIK: That's correct.

4 THE COURT: -- SIPA liquidation and a Ponzi
5 scheme.

6 MR. FOLKENFLIK: And my argument, which Your Honor
7 may or may not accept, or any Court may or may not accept,
8 is that the antecedent debt concept under -- for a Ponzi
9 scheme under SIPC incorporates the antecedent debt concept
10 from the bankruptcy statute and doesn't incorporate it in a
11 way that has any overlying statutory or policy basis for
12 changing what an antecedent debt is.

13 THE COURT: But -- but -- I'm not ruling --

14 MR. FOLKENFLIK: But in any event.

15 THE COURT: Stop, stop. I'm not ruling on this
16 now, but there are a slew of cases in all contexts that say
17 that the investor in a Ponzi scheme doesn't -- is not
18 entitled to anything more than their principal.

19 MR. FOLKENFLIK: In the SIPC proceeding, that's
20 correct.

21 THE COURT: Not just SIPC proceedings. I have
22 other Ponzi scheme cases and they're all over the country.

23 MR. FOLKENFLIK: And that's true, Your Honor, and
24 that's an argument which I most likely will lose. But the
25 other argument is different. And the other argument is as

1 to the subsequent transferee. As to the initial
2 transferee --

3 THE COURT: Right.

4 MR. FOLKENFLIK: -- I don't expect that that
5 argument will prevail. But there is an argument, and I
6 don't think it's been authoritatively disposed by higher
7 level courts. And there are many cases in Bankruptcy Courts
8 and District Courts.

9 With respect to the subsequent transferee, I
10 believe that the unitrust document, which requires a payment
11 of 12 and a half percent of the assets of the unitrust to
12 the donor in each year, that that is an antecedent debt.

13 THE COURT: Okay, but what does that have to do
14 with the discovery?

15 MR. FOLKENFLIK: So, here's the answer. Every --
16 despite the fact that Your Honor heard this morning that
17 they want admissions about every transfer to the initial
18 transferee and every transfer to the subsequent transferee,
19 we've admitted them all: with respect to Coppersmith, with
20 respect to Auerbach --

21 THE COURT: Well, that's not what I'm -- that's
22 not what I'm hearing.

23 MR. FOLKENFLIK: No, it isn't, and that's why I
24 have been struggling to get them to say, what is it that you
25 actually need and what do I need to do to show you. Every

1 transfer is the subject of one of -- or two things. Number
2 one, we admitted all of the transfers -- all of the deposits
3 into Madoff and the withdrawals out. That's admitted. It's
4 not a problem.

5 THE COURT: Of the initial transfers, they're
6 all --

7 MR. FOLKENFLIK: Of the initial transfers.

8 THE COURT: Okay.

9 MR. FOLKENFLIK: And with respect to the
10 subsequent transfers, the -- all of these defendants were
11 advised by a financial advisor corp., Family Management
12 Corp. So, we produced Family Management Corp.'s internal
13 record showing every single transfer from the funds that
14 were held under Family Management's purview, to the
15 subsequent -- every transfer out.

16 THE COURT: Let me ask you, do you know who the
17 subsequent transferees are of all of these initial
18 transfers?

19 MR. FOLKENFLIK: Yes.

20 THE COURT: Let me -- I'm asking her.

21 MS. TRUONG: We believe that we have identified
22 subsequent transferees to the extent we have sued them in
23 the case. However, we have reserved the right to, upon
24 review of the documents as we receive them, identify any
25 other potential transferees.

1 MR. FOLKENFLIK: Now, Your Honor, 100 percent,
2 let's take Coppersmith as the first example. 100 percent of
3 the transfers from the initial transferee of the unitrust
4 were made to James Coppersmith and his wife, Janice,
5 pursuant to those documents.

6 THE COURT: The sense I get from them, from the
7 plaintiffs, is they want to look at the bank records to make
8 sure that that bank statement is correct.

9 MR. FOLKENFLIK: Well, we've admitted it and
10 Mr. Coppersmith is solvent and can pay it. If they want to
11 verify it through bank records, they've subpoenaed the
12 banks. I don't know what else Family Management, if Family
13 Management delivered -- who went back to Pershing, which was
14 their custodial bank, and get the records that would be a
15 lot of burden and a lot of expense, but they've subpoenaed
16 Pershing Bank to get their records.

17 I think it's a big waste of time because I don't
18 know what it is that they think they can discover or why
19 they are looking for downstream transferees, or whether or
20 not those bank records will produce anything that will help
21 them in that regard because basically you will see that
22 people used their money, once it went into their bank
23 accounts. And with respect to Coppersmith, for example, it
24 went directly from Pershing to their own bank accounts, they
25 used it for living expenses. They used it, you know, they

1 might have given some money to their children, or they
2 tertiary subsequent transferees, I don't know, but --

3 THE COURT: Well, they could be liable, though,
4 under the statute.

5 MR. FOLKENFLIK: I think that there is, if
6 Mr. Coppersmith were not solvent and able to pay the amount,
7 which now in the two year period that's still in play under
8 Judge Rakoff's rulings, maybe that will change, in the two
9 year period, it's \$315,000. They can write a check. In
10 fact, they've gotten more money than that from the Madoff --
11 from the trustee or otherwise, with respect to another
12 account which was not in dispute.

13 So, there is no need to do that --

14 THE COURT: All right, so let's deal with --

15 MR. FOLKENFLIK: -- and I'm trying to talk sense
16 to them.

17 THE COURT: Let's deal with the Coppersmith
18 situation.

19 MR. FOLKENFLIK: Right.

20 THE COURT: In terms of your burden, forgetting
21 about the affirmative defenses for the moment, do you need
22 any further information or has this all been resolved by
23 stipulation or a promised stipulation?

24 MS. TRUONG: There are a couple of issues with
25 Coppersmith to the extent that Mr. Folkenflik has raised and

1 made factual assertions today. Based upon what we have
2 received, which is a trickle of documents, we do not believe
3 that he has provided evidence in support of these factual
4 assertions today.

5 THE COURT: But if -- I understand, but if
6 everybody -- let me start with your affirmative case.

7 What -- at this point, your affirmative case is
8 they've agreed to the initial transfers. So, in your
9 affirmative case against the initial transferees, it doesn't
10 sound like you need anything else.

11 MS. TRUONG: We don't believe that we need
12 anything else for --

13 THE COURT: Okay, I'm just dealing with --

14 MS. TRUONG: -- to prove our case.

15 THE COURT: -- your affirmative case.

16 MS. TRUONG: Yes.

17 THE COURT: With respect to the subsequent
18 transferees, I'm being told in the Coppersmith case, and I
19 guess they're prepared to stipulate that all of the money
20 went from the unitrust to Mr. and Mrs. Coppersmith, there
21 may be subsequent transfers admitted. So, what --

22 MR. FOLKENFLIK: And I believe I admitted that in
23 the answer to the complaint.

24 THE COURT: So, what more do you need for that
25 one?

1 MS. TRUONG: So, we do have stipulations that we
2 drafted. Mr. Folkenflik has recently circulated some
3 revisions to the stipulations that we do not believe are
4 acceptable, but we are willing to continue to try to discuss
5 with him those stipulations.

6 MR. FOLKENFLIK: And, Your Honor, in fairness, I
7 said in what respect is it not acceptable and what is it
8 that you need to prove that I haven't -- that I've altered
9 with my language, and I haven't gotten an answer. So, I
10 don't know.

11 We should be able to work out the stipulations.
12 We should be able to if they failed to ask for a stipulation
13 on anything I've said today and the documents don't prove
14 what I've said today, I'll stipulate to what I've said
15 today. So, that's not -- that case should be taken care of.

16 THE COURT: You're more optimistic than they are.

17 MR. FOLKENFLIK: I think that has been the case.

18 THE COURT: So what about -- all right, let me
19 hear about the affirmative defenses in Coppersmith.

20 MS. TRUONG: In Coppersmith, again, the
21 affirmative defenses that are raised go to the subsequent
22 transfers and that they were taken for value so that --

23 THE COURT: And I'm being told, all he has is this
24 unitrust agreement. That's all he's relying on. Is that
25 all you're relying on?

1 MR. FOLKENFLIK: That's correct, Judge.

2 THE COURT: So, if he stipulates that's all he's
3 relying on, then all you need is the agreement.

4 MS. TRUONG: Okay --

5 MR. FOLKENFLIK: And they have it.

6 MS. TRUONG: The other issue is that they also
7 have raised affirmative defenses as to the calculations, the
8 withdrawals, and the deposits.

9 THE COURT: I thought they admitted it?

10 MR. FOLKENFLIK: No, Your Honor, we admitted the
11 withdrawals and deposits. We admitted them in the response
12 to the complaint. There was --

13 THE COURT: I'm hearing two different things
14 here --

15 MR. FOLKENFLIK: There was one question --

16 THE COURT: -- that's the problem.

17 MR. FOLKENFLIK: There was one question where we
18 admitted the withdrawals and the deposits. The -- we
19 admitted the ultimate number, the amount that was overdrawn,
20 if you will. I think there was one number of a deposit
21 where there was a minor error between two dates and they
22 asked me to admit the dates were correct.

23 For example, there was another kind of admission
24 problem and something that's throughout the letter that Your
25 Honor received from Mr. Cremona dated January 18th. We --

1 and that's in -- they asked me to admit that we received in,
2 you know, withdrawals in excess of deposits, which we did.
3 And then they said, admit that you have none -- no documents
4 which refute the claim that you submitted withdrawals in
5 excess of deposits, and I wrote down not applicable because
6 I might have a document that might tend to refute the claim,
7 but I'm not refuting the claim. And so -- and I don't know
8 whether there's a document that tends to contradict that
9 statement, but I'm not relying on that document. So, it's
10 not applicable. They objected to that.

11 The objected to the fact that we gave them lists
12 that showed every single withdrawal from the account that
13 received the Madoff initial transfers because those
14 documents, in some cases, in Gutmacher, didn't include each
15 of the deposits from Madoff as well, but I had admitted each
16 of the deposits from Madoff into the initial transferee's
17 account. With -- now let me go a step further.

18 There were a couple of verifications we had
19 complexities about. They asked Robert Auerbach to sign a
20 verification with respect to his interrogatories. And I
21 said, well, the problem is Mr. Auerbach is under 24 hour
22 care. He's severely diabetic, suffered many strokes, and is
23 basically non-communicative. He does not speak and cannot
24 care for himself. He's under full-time care. He hasn't
25 been declared officially an incompetent. I said I don't

1 think I can give a verification for him.

2 There's a slightly different issue with respect to
3 Nicole Gerard, who is a subsequent -- alleged subsequent
4 transferee. And I said that Nicole Gerard has been in
5 mental health facilities for much of her life, has severe
6 mental problems, has had drug abuse issues, is not declared
7 incompetent -- judicially declared incompetent, but she does
8 have a conservator for her assets, and her assets come from
9 a spendthrift trust.

10 So, I feel -- I'm comfortable. I've questioned
11 her. She's confirmed the statements in the interrogatories,
12 and I don't feel as an officer of the Court I can put forth
13 a verification from her that I can attest to a good faith
14 belief that she's saying the right thing. She also has no
15 firsthand knowledge. All of the information comes to her
16 through secondhand. Her mother dealt primarily with Madoff
17 accounts with Family Management, and her mother is now
18 deceased. Her grandmother is deceased. Those are the three
19 subsequent transferees in the Gerard case: the Estate of
20 Rose Gutmacher; the Estate of Barbara Gerard; and Nicole
21 Gerard.

22 Nicole has assets in a trust, a spendthrift trust,
23 that's where all her assets are. And they are the result of
24 insurance proceeds that she recovered on the death of her
25 mother. So, those are exempt from attachment, and I keep

1 saying let's sit down and work this out.

2 And part of the problem is for logistical reasons
3 that I sympathize with, with the trustee, the people working
4 directly on this case are not in the courtroom here. These
5 are people I've spoken to, in the case of Mr. Cremona, a
6 couple times, and the other counsel, I think, not at all. I
7 need to sit down and negotiate this. I could do that at the
8 end of June because Ms. Kitaev is coming into town with
9 regard --

10 THE COURT: Who's she?

11 MR. FOLKENFLIK: She is one of the counsel for the
12 trustee and she's coming into town for a mediation before
13 Judge Conrad --

14 THE COURT: But the end of June --

15 MR. FOLKENFLIK: -- in a different case.

16 THE COURT: The end of June is a month away.

17 MR. FOLKENFLIK: That's correct.

18 THE COURT: Why does it take so long?

19 MR. FOLKENFLIK: Well, if she's coming -- if she
20 wants to come into town or, you know, but I guess I could
21 fly to Colorado where she is, but that seems to be an
22 unnecessary expense for my client --

23 THE COURT: Why can't it be done by telephone?

24 MR. FOLKENFLIK: If -- all I -- if Your Honor --

25 THE COURT: Or a video conference if you want to

1 look face to face?

2 MR. FOLKENFLIK: Your Honor, we could, but that's
3 what's happened. We've had these conversations periodically
4 and often where I say you have to narrow and tell me exactly
5 what you want, what you need for your case that I'm not
6 giving you, and I'll give it to you. We'll make sure we get
7 that. But to, for example, scan 40 boxes of daily
8 communications --

9 THE COURT: If they want to do that, what's the
10 problem?

11 MR. FOLKENFLIK: I can discuss it with my client.
12 I find it very intrusive, and I also think it's wrong to
13 have me have to go through the expense of going through the
14 40 boxes. If they go through and pick out documents to --
15 for production, I can look at them, see if they've requested
16 them, if they're relevant, if they're objectionable. If
17 they scan 40 boxes, in order for me to know how to deal with
18 that, I have to go through the 40 boxes.

19 THE COURT: Haven't you gone through them? Do you
20 know what's in them?

21 MR. FOLKENFLIK: I don't know what's in the 40
22 boxes -- I mean, I know what's in. They're daily
23 communications. The Gutmacher/Gerard family, their entire
24 financial life was run by Family Management. Then I'm told
25 they have correspondence every single day of every year that

1 they were working with Family Management, which is many
2 years. And the 40 boxes go back long before any period
3 where they are able to allege a transfer or activity that
4 would be -- lead to a recovery in this case, which should
5 only go for two years, for example.

6 Now, if they're only talking about two years,
7 yeah, they can probably scan those and I'll go through
8 those, and that makes sense if they're two years prior to
9 December of 2008. If they want subsequent to 2008, we can
10 talk about that as well, what the need for that is.

11 THE COURT: Well, you've raised -- okay, but
12 you've raised issues regarding the use of the money also.
13 And -- that it's used for living expenses or the people --

14 MR. FOLKENFLIK: I've raised those issues, I'm not
15 sure they're defenses, but yes.

16 THE COURT: Well, that's what I was going to ask.
17 I don't -- you know, I had it in the case yesterday, I
18 think, and I don't know why they're defenses.

19 MR. FOLKENFLIK: I don't think they are. I
20 mean --

21 THE COURT: People are seeking rachmones, but --

22 MR. FOLKENFLIK: Yes, it's a Writ of Rachmones
23 might be applicable, but with -- and particularly with
24 regard to Auerbach's because many of the expenses were for
25 his healthcare and insurance, but that is more properly met

1 by a hardship application, which we will be filing in that
2 case. We did not object to them getting all of their bank
3 records. You know, I think this is something we could work
4 out if Your Honor urges us to.

5 THE COURT: It's been going on a long time,
6 that's --

7 MR. FOLKENFLIK: It has.

8 THE COURT: -- my one concern.

9 On the other hand, I was starting to get the sense
10 that the trustee is over-discovering in these cases. If
11 somebody is willing to admit, for example, to the initial
12 transfers that the trustee alleges, it seems to me that's
13 the end of the, at least the direct case regarding the
14 initial transfers. Then whatever legal arguments are left
15 in the case, I guess the parties can make.

16 MS. TRUONG: One of the issues that -- sorry, Your
17 Honor.

18 THE COURT: Go ahead.

19 MS. TRUONG: One of the issues that we have come
20 across in Coppersmith are for the reasons that
21 Mr. Folkenflik enumerated, is that the defendants are not --
22 some of the defendants are not able to verify responses and
23 no documents have been produced that would verify any of the
24 responses.

25 For example, in response to four interrogatory

1 requests and in response to all of the defendants -- the
2 document requests, the defendants said that they would
3 produce business records. They've only produced 31 pages,
4 10 of which are duplicative and --

5 THE COURT: But what's the issue? You know --

6 MS. TRUONG: And --

7 THE COURT: -- part of the problem I'm having in
8 addition to not -- I'm hearing two different sides of the
9 stories is, as the issues get narrower, you need less
10 documents. So, to tell me they produced 31 documents on an
11 issue that may not be an issue in the case anymore doesn't
12 mean that much.

13 MS. TRUONG: Well, even as to the admissions and
14 the request for admissions that a trustee served -- request
15 for admissions on both the individual Coppersmith defendants
16 and the unitrust, and the defendants served responses on the
17 trustee for the unitrust on May 10th of 2013 and for the
18 individual defendants on August 16th of 2013, and the
19 responses received in each of those requests for admissions
20 are conflicting.

21 MR. FOLKENFLIK: I am not aware of that, Your
22 Honor, that they are conflicting responses with respect to
23 the same question unless it is -- there is some reason for a
24 difference.

25 We -- with respect to the unitrust, we filled out

1 -- we -- and the -- with respect to a request for admission,
2 if I don't admit, I don't admit and there's potential
3 penalty, and that's what it is. That's --

4 THE COURT: Did they not admit or provide
5 admissions that varied -- that were not true admissions. In
6 other words, I'm not talking about the inconsistency, but
7 kind of I can't admit it, but here's what happened type of
8 thing?

9 MS. TRUONG: My understanding is that there were
10 internal inconsistencies in the admissions.

11 MR. FOLKENFLIK: And, Your Honor --

12 THE COURT: But you could get testimony that could
13 have that, right? Just pick the one you like best.

14 MR. FOLKENFLIK: If they want to ask me to make a
15 representation and/or make it on behalf of my clients,
16 explaining whatever inconsistencies they've identified,
17 that's fine. But it's been like punching at a cloud. I
18 haven't been able to get it narrowed down to sort of precise
19 issues where I actually know what they want so I can give it
20 to them.

21 THE COURT: I don't know, it almost sounds like
22 these cases can be tried on stipulated facts, but what do
23 you propose?

24 MS. TRUONG: We --

25 THE COURT: Because we're going around, and

1 around, and around.

2 MS. TRUONG: Again, I'd like to reiterate as I
3 mentioned earlier that if we can get acceptable
4 stipulations, then yes, we agree that we can accept those
5 stipulations or the proof of our case.

6 THE COURT: Okay, and you sent --

7 MS. TRUONG: However --

8 THE COURT: -- draft stipulations?

9 MS. TRUONG: We sent draft stipulations in the
10 past. Last year we sent them. Finally, just in the last
11 week have we got -- received actually on Monday, we received
12 edits to those stipulations that we are reviewing. And so
13 far, we do have some issues with those, which we are again
14 willing to continue to negotiate with the defendants on.
15 Our concern, as you've mentioned, is that this has been
16 going on for over a year. And so, we are trying to narrow
17 this issue and come to agreement.

18 THE COURT: But you don't think you're in a
19 position to try your case today?

20 MR. JACOBS: Your Honor, if I may interject,
21 absolutely not.

22 And the problem is that while we agree with the
23 principle that you're articulating that if there are factual
24 stipulations, obviously that it -- that narrows the issues
25 and narrows or eliminates necessary discovery on those

1 issues.

2 Gutmacher, for example, we haven't been
3 negotiating any stipulation because we've received
4 absolutely no discovery in response to our request on that
5 case. We don't have a basic understanding even of who the
6 defendants are and what their legal and contractual
7 relationships are to each other. We also believe that many
8 of some or all of those defendants are also the principals
9 behind Family Management Corporation, which is the entity
10 that managed the trust for all -- in all three cases.

11 They have not responded to our subpoenas. We
12 don't have any document productions from them regarding --
13 giving us insight into the basic facts that we would need to
14 even contemplate what a stipulation might say. These
15 defendants have been completely dilatory over a year of
16 discovery in refusing to answer even basic discovery
17 requests for information. That is our frustration.

18 MR. FOLKENFLIK: Your Honor, that --

19 THE COURT: Okay, let's just start with Gutmacher.

20 MR. FOLKENFLIK: Let me explain the Gutmacher
21 situation.

22 Family management corFirst of all, the trustee of
23 some of these trusts, and that's not the case in Gutmacher,
24 is Seymour Zises, who is a principal of Family Management.
25 Family Management has produced in the case of Gutmacher

1 hundreds and hundreds of pages of computer printout showing
2 every transfer of every dollar out of the accounts which
3 received any Madoff distributions. Everyone.

4 The problem with Gutmacher is if they don't
5 understand the relationships of the parties, that's because
6 their discovery hasn't address that. I'm happy to sit down
7 with them and discuss what it is in some detail, but they
8 just keep saying, just give me all the documents I asked
9 for. Let me scan 40 boxes of documents, that kind of
10 approach, rather than saying, look, why don't we have a
11 discussion off the record. Let's talk about who does what,
12 who is what to whom, what the situation is, and then we will
13 see whether we can sign a stipulation. But instead, they
14 want to go through tens of thousands of pages of documents.

15 In Gutmacher, I believe they subpoenaed and
16 received discovery from three separate commercial banks, as
17 well -- Pershing, which received the Madoff money, and the
18 family's private bank accounts and I don't know what any of
19 that means.

20 THE COURT: So, what do you need?

21 MR. JACOBS: Well, Your Honor, over all three of
22 these cases, each of which has multiple defendants that have
23 complicated legal relationships to each other, we've
24 received in total about 100 documents. And we -- we've
25 reviewed those documents --

1 THE COURT: See, I'm hearing two different things
2 again.

3 MR. JACOBS: What we -- what I would like to
4 represent is that the documents don't show what counsel here
5 purports that they show. They are not complete records of
6 all of the subsequent transfers that occurred between and
7 amongst defendants. There are very few documents, if any,
8 that go to the legal relationship between the defendants at
9 issue, with the exception of a few of the operative trust
10 agreements. But those documents don't address where the
11 money went, why the money went there, instructions between
12 the parties, instructions from Family Management
13 Corporation. It's simply not enough.

14 And I have a binder of correspondence that we have
15 exchanged over the course of the year that I'm happy to
16 submit to the Court --

17 THE COURT: I don't want to read a binder of
18 correspondence.

19 MR. JACOBS: I'm sure that you don't.

20 THE COURT: I want to know where we are now.

21 MR. JACOBS: We want some basic discovery on our
22 claims and the affirmative defenses that counsel has raised
23 so that we can meaningfully have a discussion about what a
24 stipulation would look like that would obviate the need for
25 additional discovery.

1 MR. FOLKENFLIK: Your Honor, why don't we start,
2 if I may make a suggestion?

3 THE COURT: Go ahead.

4 MR. FOLKENFLIK: With having a meeting, seeing if
5 we can reconcile what it is that they're actually looking
6 for which --

7 THE COURT: You don't need me for that.

8 MR. FOLKENFLIK: No we don't. So, we can start
9 and have that meeting and write a joint letter to the Court
10 within seven days describing where we are at that point.

11 We are hearing two different stories, yes, but the
12 -- I don't believe that I received discovery that requires
13 every financial transaction between every defendant, but
14 that would only apply to Gutmacher as an issue.

15 With respect to Coppersmith and Auerback, it's
16 irrelevant. There aren't a lot of complicated transactions.
17 There are people who are defendants who are husbands and
18 wives who received transfers from the initial transferee,
19 and that's it. And in the initial transferee in Auerback is
20 a revocable trust and I doubt that I'm going to prevail upon
21 Your Honor to uphold that revocable grantor trust as being a
22 separate entity and not a conduit. But, you know, I don't
23 know that I'll even try it, but I may, depending on how the
24 facts evolve.

25 But the bottom line is, if they would rather than

1 saying, produce all the documents, I'll go through and try
2 and figure out what I need, why don't we start with what it
3 is they would be looking for in the documents.

4 THE COURT: What you're saying is very reasonable,
5 but my point is, this has been going on and I don't know
6 whose fault it is, but it has to be resolved.

7 MR. FOLKENFLIK: Your -- that's correct, Your
8 Honor, and I'm trying to figure out a way to resolve it and
9 I've been doing this in this way for a very long time and
10 haven't been able to get them to pinpoint what they're
11 trying to prove. For example, in my conversations with
12 Mr. Cremona, he admitted that there's going to be no issue
13 in this case about good faith with respect to the subsequent
14 transferees.

15 THE COURT: It doesn't sound like a bad faith case
16 from what I'm hearing.

17 MR. FOLKENFLIK: It doesn't, but if you read the
18 pleading, it does. If you read the discovery request, it
19 does. So, I'm not sure -- I mean, we've answered
20 interrogatories about what people did to try and investigate
21 Madoff when they asked that, and gave them the names of
22 anybody who there were discussions with.

23 THE COURT: Right.

24 MR. FOLKENFLIK: But I'm trying to get them to
25 narrow the discovery to the issues they actually want and I

1 can't get them to help me focus with them on what those
2 issues are so we can resolve them.

3 MR. JACOBS: Your Honor, if I may, that is
4 patently untrue. We have exchanged numerous letters that in
5 painstaking detail --

6 THE COURT: I saw them --

7 MR. JACOBS: -- provide Mr. Folkenflik --

8 THE COURT: -- I saw the January 28th letter.

9 MR. JACOBS: -- exactly what the discovery that
10 we're seeking.

11 THE COURT: But he -- what he's saying is, look,
12 yeah, I haven't produced everything you've asked for, but
13 it's burdensome and you don't need it because I'm willing to
14 admit certain things. So, tell me what you really need to
15 prove your case. And to simply say, I asked for discovery
16 and he didn't produce it, doesn't get us where we want to
17 get to and that's what I'm sensing is the problem here.

18 MR. JACOBS: Well, that offer to admit to certain
19 facts has been -- we've taken him up on that offer in
20 numerous instances and those facts still haven't -- we
21 haven't received any admissions as to those facts. We were
22 before the Court with Mr. Folkenflik on these same issues
23 last year, on August 19, 2013, he wrote a letter to the
24 Court with a Schedule A that lists a large number of items
25 that he represented to the Court that he would produce by

1 September 6th of that year.

2 Most of those issues have not -- most of those
3 items that are specific, narrowly identified on that
4 Schedule still have not been produced. And to the extent he
5 references interrogatory responses, he did serve
6 interrogatory responses, but most of them refer to documents
7 that have never been produced. I mean, this is -- we
8 literally have nothing to go on here. It's hard to even
9 have an intelligent discussion about what a stipulation
10 might look like when we have no idea of what the parameters
11 are --

12 MR. FOLKENFLIK: And --

13 MR. JACOBS: -- of --

14 THE COURT: Is the Gutmacher case the one with the
15 most problems in discovery?

16 MR. JACOBS: I think that they are all about
17 equal, but Gutmacher is probably the case where we have the
18 least understanding of basic facts.

19 THE COURT: I mean, from what I'm hearing about
20 the Coppersmith case, it seems to be a very straightforward
21 case. The unitrust got the transfers, which everybody
22 admits. The money was then transferred to Mr. and Mrs.
23 Coppersmith. I don't know if you could put an amount on who
24 got what, although it may not matter in the end, and maybe
25 there were subsequent transfers to kids, or grandchildren,

1 or something like that, but what do you need? You have the
2 unitrust document. That's the basis of his affirmative
3 defense of paying for value. What more do you need in a
4 case like that?

5 MR. FOLKENFLIK: And, Your Honor --

6 THE COURT: Just a minute.

7 MR. JACOBS: I think that the rules provide us a
8 right to basic discovery concerning the claims and defenses
9 in the case. And at a minimum, that would be documents that
10 Mr. Folkenflik intends to use and rely upon in connection
11 with his affirmative defenses, and documents that enable us
12 to see and confirm the factual allegations and the
13 underlying facts that underlie the claims that we made in
14 our case. And I don't think that it's fair --

15 THE COURT: Not if he admits it. You don't have
16 to see any documents if he admits these were the transfers.

17 MR. JACOBS: But he has not admitted to all of
18 those facts and in a way that complies with his discovery
19 obligations.

20 MR. FOLKENFLIK: In fairness to counsel, those are
21 just words.

22 THE COURT: Well, I keep hearing about his
23 discovery obligations. Here's what I'm going to suggest.
24 If you can work it out, fine. You can make motions to
25 compel, to strike answers, or whatever, because we're just

1 not getting anywhere with this. And as much as I don't
2 invite sanctions motions under Rule 37 --

3 MR. JACOBS: Right.

4 THE COURT: -- I don't know how else to resolve
5 this.

6 MR. JACOBS: Right.

7 THE COURT: Then he can tell me what he has
8 produced and, you know, I'll decide who --

9 MR. JACOBS: Right.

10 THE COURT: -- should pay the attorney's fees in
11 the end.

12 MR. JACOBS: Well, Your Honor, the reason -- when
13 we initially asked for our hearing most recently, there were
14 some developments after we submitted our letter that caused
15 us to represent to the Court that we believed we could work
16 out some of these issues. And number --

17 THE COURT: Okay, it doesn't like it to me.

18 MR. JACOBS: Well, number one --

19 THE COURT: Because you have a different approach
20 to what this case is --

21 MR. JACOBS: Sure, well --

22 THE COURT: -- what discovery's about.

23 MR. JACOBS: Well, what we've represented today is
24 that there are -- if Mr. Folkenflik produces the 40
25 documents of information from FMC, we're allowed to copy and

1 review that, and we can also make progress on the
2 stipulations that we've been discussing --

3 THE COURT: Why do you need it beyond two years?
4 You're limited to two year recoveries at this point.

5 MR. JACOBS: I didn't represent that we needed it
6 beyond two years. We just -- FMC is --

7 THE COURT: So, how many boxes are two years?

8 MR. FOLKENFLIK: Probably two.

9 THE COURT: All right. Do you have any objection
10 to producing the two years?

11 MR. FOLKENFLIK: Yes, but I won't press it.

12 THE COURT: All right. So, let him copy the two
13 years at their expense.

14 MR. FOLKENFLIK: Okay.

15 THE COURT: What else?

16 MR. FOLKENFLIK: The -- Your Honor, with respect
17 to Coppersmith, we have admitted everything, but --

18 THE COURT: It sounds like that case is ready to
19 be tried.

20 MR. FOLKENFLIK: It's -- I think Coppersmith is
21 ready for summary judgment or a trial.

22 THE COURT: I'll try it.

23 MR. FOLKENFLIK: And --

24 THE COURT: It sounds like a case that can be
25 tried in half a day.

1 MR. FOLKENFLIK: But I think under the existing
2 order, of course, Your Honor has the power to change it, the
3 parties could mediate first with respect to the Coppersmith
4 case.

5 THE COURT: Look, if you both want to mediate,
6 that's fine. I'm happy to try the case if it's ready to go.
7 It doesn't sound like it will take more than half a day.
8 Sooner or later you're going to have to start trying some of
9 these cases. You tell me. Do you want to try the
10 Coppersmith case?

11 MR. JACOBS: I think that we would need to
12 finalize the stipulation with Mr. Folkenflik first before we
13 could -- I can stand here today and tell you that we're
14 ready.

15 THE COURT: All right, fair enough. For example,
16 I assume he wants to know that the only document you're
17 relying on for your antecedent debt claim for the subsequent
18 transferees is the trust agreement.

19 MR. JACOBS: Correct.

20 THE COURT: So that --

21 MR. FOLKENFLIK: That's -- and that's it. They
22 haven't asked that. I'm happy to admit to that.

23 THE COURT: What else do you need?

24 MR. JACOBS: Well, there's also the question of --
25 that's the stipulation that we have exchanged also includes

1 stipulations as to the facts concerning the subsequent
2 transferee defendants.

3 THE COURT: Which he tells me he's willing to
4 stipulate.

5 MR. JACOBS: Right, but it's been a year and he
6 hasn't. So, I'm hopeful that we can and we would like to,
7 but it hasn't happened, Your Honor. So, that's our concern.

8 THE COURT: Why don't you send him a draft
9 stipulation of what you're prepared to admit to with the
10 subsequent defendants -- for the subsequent transferees --

11 MR. FOLKENFLIK: I'll add --

12 THE COURT: -- as to who they are and how much
13 they got.

14 MR. FOLKENFLIK: I'll add that --

15 THE COURT: When are you going to do that? You
16 tell me you already -- have done it already, so --

17 MR. FOLKENFLIK: Yeah, I could do it by -- one
18 week, Your Honor. I'd like to say less, but one week just
19 in case. I have to check with clients.

20 MR. JACOBS: Your Honor, could we have that same
21 arrangement for Gutmacher and Auerbach?

22 THE COURT: Any objection?

23 MR. FOLKENFLIK: Any objection to the same
24 arrangement to say --

25 THE COURT: So, in other words, you're going to --

1 MR. FOLKENFLIK: No, I understand --

2 THE COURT: -- the stip, right. It sounds like
3 the subsequent transferees are the problems in these cases.

4 MR. JACOBS: That's correct.

5 MR. FOLKENFLIK: I --

6 THE COURT: Putting aside -- yeah, all right.

7 MR. JACOBS: Yeah, that's --

8 MR. FOLKENFLIK: The --

9 MR. JABOBS: -- that's one of the main issues,
10 yes.

11 THE COURT: So, would you be willing or are you
12 prepared to draft and send him a stipulation in each of the
13 adversary proceedings which stipulates to the subsequent
14 transfers as to date, amount, and identity of the
15 transferee, which is what you're looking for, right?

16 MR. JACOBS: Correct.

17 MR. FOLKENFLIK: With respect to Auerbach and
18 Coppersmith, I think I've provided that information and I
19 can provide that information within a week.

20 THE COURT: So, do a narrative form of the
21 stipulation.

22 MR. FOLKENFLIK: In the narrative form on the
23 stipulation. With respect to Gutmacher, the -- here is the
24 problem, Your Honor, with respect to Gutmacher using the
25 formulation Your Honor just approved. With respect to

1 Gutmacher, the Gutmacher enterprises was an actual business
2 entity and then when it went out of business, it effectively
3 held the assets of the Gutmacher family, chiefly Rose,
4 Barbara, and Nicole. The family received money from Madoff,
5 that they withdrew from Madoff, as well as from other
6 investments.

7 THE COURT: Directly from Madoff or through
8 Gutmacher?

9 MR. FOLKENFLIK: No, the -- Gutmacher Enterprises
10 was a direct investor and withdrew money from Madoff. They
11 were also, in the case of Gutmacher, there's also a case
12 where, you know, I believe 2005, they put \$2 million back
13 into Madoff, so that issue that Judge Rakoff had where it
14 was, you know, does the accounting restart on the new
15 deposit? Is it life over (indiscernible) effectively for --

16 THE COURT: You go back to the entire life of the
17 account.

18 MR. FOLKENFLIK: At the present, that's the state
19 of the law. We want to preserve the claim -- the defense
20 that that's not appropriate method of accounting because
21 that has not been ruled on by the Second Circuit as yet.

22 THE COURT: Is that part of the 546(b) appeal?

23 MR. JACOBS: No, Your Honor. As I have discussed
24 with Mr. Folkenflik, he keeps raising the antecedent debt
25 decision that Judge Rakoff issued in October of last year

1 and I've explained to him that the defense group in that
2 very case had moved pursuant to 1292(b) to seek an
3 interlocutory appeal and that appeal was denied. So,
4 although we're talking about a theoretical appeal that
5 may --

6 THE COURT: Right.

7 MR. JACOBS: -- come sometime in the future, I
8 don't know how that's relevant to the discovery today.

9 THE COURT: I'm not going to decide that
10 differently from Judge Rakoff.

11 MR. FOLKENFLIK: No, no I am -- I'm saying I'm not
12 expecting Your Honor to. I'm just saying I would want to
13 preserve that defense in the event that the law evolves in a
14 different way. But --

15 MR. JACOBS: Our question is, what does that have
16 to do with --

17 THE COURT: That will be established by the record
18 of transfers.

19 MR. FOLKENFLIK: Exactly so. The -- but with
20 respect to the Gutmachers, other than that issue that
21 addresses all of them, what happened was they paid vendors,
22 they used the Gutmacher Enterprise's account to manage their
23 lives and they paid bills and --

24 THE COURT: They paid bills or Gutmacher paid its
25 operating bills?

1 MR. FOLKENFLIK: Gutmacher wasn't operating.

2 THE COURT: It wasn't, okay.

3 MR. FOLKENFLIK: Gutmacher paid bills for family
4 members.

5 THE COURT: Right.

6 MR. FOLKENFLIK: How you allocate that to the
7 various individuals is a --

8 THE COURT: Well, that's his problem.

9 MR. FOLKENFLIK: It's his problem, that's correct.

10 MR. JACOBS: We've received zero discovery on that
11 issue, this is --

12 MR. FOLKENFLIK: That's not true.

13 MR. JACOBS: -- this is news to us. We don't know
14 this. We have no basis to understand any of the factual
15 assertions that he's making here because we have no
16 discovery on this case.

17 MR. FOLKENFLIK: When -- I think counsel --

18 THE COURT: But he told me he produced some
19 document, a computer printout that showed every subsequent
20 transfer.

21 MR. JACOBS: That is not true according to our
22 review.

23 MR. FOLKENFLIK: Well, I don't know whether you've
24 reviewed the documents, but I will reproduce that document
25 to them today.

1 THE COURT: If you have produced that document,
2 then what's the problem with stipulating as to who received
3 the subsequent transfers?

4 MR. FOLKENFLIK: Because the person who received
5 the subsequent transfer could be Food Emporium, but not
6 necessarily for the benefit for Barbara or Rose. It's not
7 showing whose benefit --

8 THE COURT: All right, well, but -- but you show
9 that and maybe they -- if it's a sizeable transfer, I don't
10 think they're going after a grocery bill. But if it's a
11 sizeable subsequent -- subsequent, subsequent transfer, they
12 may want to know who that person is.

13 MR. FOLKENFLIK: That's fine with me, Your Honor.

14 THE COURT: So, what --

15 MR. FOLKENFLIK: And they have, as I said, they've
16 gone through their bank accounts. We have produced that
17 document. We've also produced an allocation table that was
18 prepared by accountants during the course of a tax audit and
19 did allocations among the various individuals. And I said,
20 I'm not sure I'm bound by that tax allocation table, but we
21 have it and you should have it.

22 THE COURT: But that doesn't mean they're the
23 subsequent transferees. So, the purpose is a fraudulent
24 transfer litigation.

25 MR. FOLKENFLIK: It may or may not, I agree.

1 THE COURT: So, we come back to the question of
2 it. Are you prepared to stipulate to the date, amount, and
3 identity of the subsequent transferees, whether it's Food
4 Emporium, the local locksmith, or one of the beneficiaries
5 in the Gutmacher case?

6 MR. FOLKENFLIK: If by the subsequent transferee,
7 Your Honor, means to whom the check was written, not for
8 whose benefit it was written but to whom the check was
9 written --

10 THE COURT: To whom the check was written, then
11 he --

12 MR. FOLKENFLIK: -- then I should be able to
13 stipulate to that and hopefully let me have two weeks on
14 that because it's much more complicated.

15 MR. JACOBS: What happens then, Your Honor, when
16 the identity of the person to whom the check was written is
17 alleged to not be the beneficial recipient of that value and
18 the trustee has no discovery from Mr. Folkenflik on the
19 identities of the persons that he may later interpose are
20 the actual beneficiaries.

21 THE COURT: Well, I guess you could send him -- I
22 mean, this is a process, but then you can send him an
23 interrogatory which says to the extent you contend that the
24 transferee was not the beneficial recipient of that
25 transfer, like Food Emporium or something like that,

1 identify who it was.

2 MR. JACOBS: Well, Your Honor --

3 THE COURT: And if he doesn't, then you'll get
4 more discovery.

5 MR. JACOBS: Your Honor --

6 THE COURT: But it may not be -- what I'm saying
7 is, unless it's a really, really big transfer and you're
8 talking to a -- about a second generation of subsequent
9 transferees, you may make the judgment that it's really not
10 worth pursuing, even though you might technically be
11 entitled to the information.

12 MR. JACOBS: That's absolutely correct, and we did
13 serve that interrogatory. I believe that Mr. Folkenflik, or
14 one that would encompass that information. I believe
15 Mr. Folkenflik said that the answer would be provided in the
16 form of documents produced. Those documents were never
17 produced.

18 THE COURT: Documents -- let's start with the
19 stipulations. Here's what I'll do. We'll enter an order,
20 you can settle a proposed order or you can submit a consent
21 order if you can agree to it. I'll give you two weeks to do
22 the following: to make available for copying at the
23 plaintiff's expense, the FMC boxes for the two year period
24 that we're talking about.

25 MR. FOLKENFLIK: For the Gutmachers' family?

1 THE COURT: For the Gutmachers, well --

2 MR. FOLKENFLIK: That's correct.

3 THE COURT: -- it doesn't sound like it's much of
4 an issue with the other ones at this point. In each of the
5 three cases, you'll provide a stipulation identifying a
6 subsequent transferee as to date, amount, and identity of
7 the subsequent transferee within two weeks.

8 MR. FOLKENFLIK: The initial subsequent
9 transferee.

10 THE COURT: The initial subsequent transferee, and
11 that the failure to comply with the order may result in
12 sanctions, including the striking of affirmative defenses or
13 the entry of judgment in favor of the plaintiff. Let's --

14 MR. FOLKENFLIK: I can assure Your Honor --

15 THE COURT: -- let's move this along.

16 MR. FOLKENFLIK: I can assure Your Honor you won't
17 be faced with that issue.

18 THE COURT: Well, I'm hearing that.

19 MR. FOLKENFLIK: Now, I have to prove it.

20 THE COURT: But don't ask for the sun, the moon,
21 and the stars when you don't need the sun, the moon, and the
22 stars. And it is burdensome. If you have enough to prove
23 your case, it seems to me that you're ready to go in these
24 cases and we have to start trying them.

25 All right, let me schedule another conference

1 because I may not be as optimistic as everybody is here that
2 this is going to be resolved. And we can deal with the, I
3 guess the verbiage in the stipulations if there are disputes
4 over what it says or what it should say.

5 So, let's say June 19th, okay? By then, the
6 stipulations will have been produced. Hopefully there will
7 be some discovery -- some discussion if they're not totally
8 satisfactory and we'll see where this goes.

9 MR. JACOBS: Thank you, Your Honor.

10 MR. CREMONA: Thank you, Your Honor.

11 THE COURT: All right.

12 MR. FOLKENFLIK: Thank you.

13 THE COURT: Thank you.

14 (Proceedings concluded at 10:57 a.m.)
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C E R T I F I C A T I O N

I, Jamie Gallagher, certify that the foregoing transcript is
a true and accurate record of the proceedings.

Jamie Gallagher

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